

National Organization of Veterans' Advocates
Executive Summary
Testimony on Discussion Draft
Veterans Appeals Improvement and Modernization Act of 2017
May 2, 2017

Attorneys and agents handle a considerable volume of appeals at BVA. In FY 2015, for example, attorneys and agents handled 14.9% of appeals before BVA. This number was fourth only behind Disabled American Veterans (28.1%), State Service Officers (16.5%), and American Legion (15%). U.S. Department of Veterans Affairs, *Board of Veterans' Appeals Annual Report Fiscal Year 2015* at 27. More specifically, NOVA members have been responsible for significant precedential decisions at the CAVC and Federal Circuit. In addition, as an organization, NOVA has advanced important cases and filed amicus briefs in others. *See, e.g., Henderson v. Shinseki*, 562 U.S. 428 (2011)(amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013)(addressing VA's failure to honor its commitment to stop applying an invalid rule); *Robinson v. McDonald*, No. 15-0715 (July 14, 2016)(CAVC amicus).

NOVA appreciates the significant improvements the Committee has made to this legislation. NOVA will not oppose the bill if the effective date protection extended to court proceedings remains in the legislation. In addition, because of VA's continued disregard for NOVA's status as a stakeholder in this process, we ask the Committee to include NOVA as a stakeholder considered "appropriate" under the statute for purposes of the collaboration necessary to certify the program is ready to implement.

NOVA included some other topics for further consideration. Please see the testimony for a more detailed discussion of these and other topics. The main areas are outlined below:

- Notice: It is critical that VA be required to provide adequate notice of the decision on a supplemental claim, i.e., identification of the elements not satisfied leading to the denial.
- Duty to assist: This provision should be clarified to ensure the restriction on the duty to assist at BVA is limited to a duty triggered by evidence submitted after the agency's decision and does not apply to affirmative duties required to be performed by BVA in the conduct of its adjudication process.
- New and relevant standard: The standard should be "new" only or revert to the current standard.
- Docket management: NOVA appreciates the inclusion of a requirement that the Secretary provide a report describing the docket "for cases in which no hearing before the Board of Veterans' Appeals is requested in the notice of disagreement but the appellant requests, in the notice of disagreement, an opportunity to submit additional evidence." NOVA urges the Committee to require such a docket.
- Electronic access: VA must commit to providing attorneys and agents, and their professional staff members, with consistent electronic access to claimants' files. NOVA urges Congress to fully fund VA's information technology budget requests, especially innovations needed for VBMS and modernization of BVA systems. Modern IT systems, to include electronic case filing systems common in other venues, are necessary tools that benefit veterans, their advocates, and VA employees.